

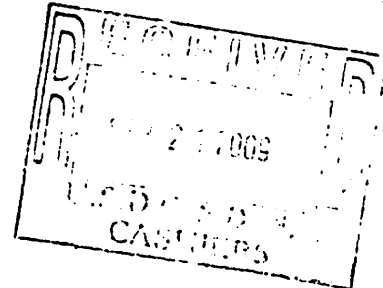
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09 CIV 8051

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Attorneys for Plaintiff
COMMERCIAL METALS COMPANY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



COMMERCIAL METALS COMPANY.

Plaintiff,

-against-

MV *GENCO WARRIOR*, *in rem*, HER
ENGINES, TACKLE, APPAREL, ETC.,
GENCO WARRIOR LTD, GENCO SHIP
MANAGEMENT LLC, and HYUNDAI
MERCHANT MARINE CO., LTD., *in*
personam.

Defendant

Case No. 09 CIV 8051 DC
ECF CASE

COMPLAINT

Plaintiff, Commercial Metals Company, by and through its undersigned attorneys, complains of Defendants, MV *Genco Warrior*, *in rem*, Genco Ship Management LLC, and Hyundai Merchant Marine Co., Ltd., *in personam*, and respectfully shows the Court as follows:

I. PARTIES

1. Plaintiff, Commercial Metals Company, is a corporation existing under the laws of Delaware and maintains a place of business in Texas.

2. Defendant *in rem*, MV *GENCO WARRIOR*, is a Marshall Islands-flagged bulk carrier of 31,069 gross tons, built in 2005, that transported the steel cargo made the subject of this proceeding.

3. Defendant Genco Warrior Ltd., is a Marshall Islands company, which may be served with process in care of Genco Ship Management LLC, at its home office, 20th Floor, 299 Park Avenue, New York, NY 10171-002. Upon information and belief, said Defendant was the registered owner of the MV *Genco Warrior* at all relevant times.

4. Defendant Genco Ship Management LLC, is a Delaware corporation with its principal place of business in New York, NY, which may be served with process at its home office 20th Floor, 299 Park Avenue, New York, NY 10171. Upon information and belief, said Defendant was the manager of the MV *Genco Warrior* at all relevant times.

5. Defendant Hyundai Merchant Marine Co., Ltd., is a company organized and existing under the laws of a state other than New York, and, upon information and belief, was the charterer of the MV *Genco Warrior* at all relevant times. In accordance with the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the "Hague Convention"), Plaintiff hereby forwards duplicate originals of process with this Complaint, translated into Korean, to the Central Authority for South Korea, to wit: National Court Administration, ATTN: Director of International Affairs, 967, Seocho-dong, Seocho-gu, Seoul 137-750, South Korea for service on Defendant Hyundai Merchant Marine Co., Ltd., at its home office located at 66, Chokson-dong, Jongro-ku, Seoul 110-052, South Korea.

II. JURISDICTION & VENUE

6. This is an admiralty or maritime claim within the jurisdiction of the United States and this Honorable Court pursuant to Article III, section 2 of the U.S. Constitution, 28 U.S.C. § 1333, and Rule 9(h) of the Federal Rules of Civil Procedure. This claim is asserted against the vessel, MV

Genco Warrior, in rem, pursuant to Supp. Rule C of the Federal Rules of Civil Procedure, and against Defendant Hyundai Merchant Marine Co., Ltd., by agreement.

7. Venue is proper pursuant to Rule 82, Fed. R. Civ. P.

III. BACKGROUND

8. On or about July 25, 2008, and following, cargos of prime, newly produced carbon steel line pipe were delivered in good order and condition in Shanghai Port of China, to the MV *Genco Warrior* bound for Houston, Texas. The owners, carriers, and/or charterers of the vessel issued bills of lading numbered HDMUSHOHS8190115, HDMUSHOHS8190167, HDMUSHOHS8190168, HDMUSHOHS8190175, HDMUSHOHS8190176, HDMUSHOHS8190177, HDMUSHOHS8190178, HDMUSHOHS8190179, HDMUSHOHS8190202, and possibly others, all for voyage 819M, covering the aforementioned cargo, and all defendants agreed safely to receive, handle, load, stow, secure, discharge and deliver at Houston, Texas, the cargo in the same good order and condition as when received, in consideration of freight charges paid.

9. Following its ocean voyage, the above-referenced cargo discharged in Houston, Texas, not in the same good order and condition as when received but, on the contrary, much of the cargo was physically damaged. The loss of and damage to cargo arising during shipment on the MV *Genco Warrior* gives rise to a maritime lien in favor of cargo's interests, which Plaintiff hereby asserts against the MV *Genco Warrior, in rem*, its owners, operators and managers, Defendants Genco Warrior Ltd., Genco Ship Management LLC, and the charterer, Defendant Hyundai Merchant Marine Co., Ltd., *in personam*.

IV. CAUSES OF ACTION

10. The damage to the cargo was the direct and proximate result of the acts or failure to act of the Defendants herein, which acts or failure to act constitute negligence, breach of contracts of carriage, including a contract of carriage between Plaintiff Commercial Metals Company and Defendant Hyundai Merchant Marine Co., Ltd., and other Defendants if applicable, breach of contracts of bailment, unseaworthiness, deviation and/or breach of the implied and/or express warranties on the part of the Defendants while the cargo was in the Defendants' care and custody.

V. DAMAGES

11. By virtue of the aforementioned damages, Plaintiff has suffered loss and damage of at least \$25,000.00, plus interest, court and other recoverable costs, for which sum it brings this action.

12. In addition to the aforementioned damages, Plaintiff hereby demands attorney's fees in accordance applicable law and agreement. Reasonable attorney's fees in this matter are in an amount of at least \$10,000.

VII. AUTHORITY

13. Plaintiff Commercial Metals Company was the shipper, consignee, or owner of the shipment of cargo described herein and brings this action on behalf of, and for the interest of all parties who may be, or become interested in such shipment, as their respective interests may appear, and Plaintiff Commercial Metals Company is entitled to maintain this action.

14. If any charterparty, booking note, bill of lading or other contract of carriage legally obligates CMC to arbitrate all or any part(s) of the disputes or matters arising herein, then Plaintiff

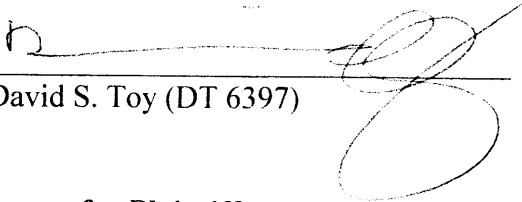
hereby presents notice of claim and demand for relief at arbitration in the forum required, and for that purpose, appoints as arbitrator Lucienne C. Bulow of New York City as arbitrator thereof.

WHEREFORE PREMISES CONSIDERED, Plaintiff prays that its maritime lien and claims against MV *Genco Warrior* be enforced, and that Defendants Genco Warrior Ltd., Genco Ship Management LLC, and Hyundai Merchant Marine Co., Ltd., be cited to appear and answer herein, and that upon final hearing of all claims, Plaintiff have and recover judgment against Defendants in an amount equal to its damages and disbursements, together with attorney's fees as may be awarded, interest at the legal rate until paid, and costs of Court. Plaintiff prays for all such further relief, both general and special, at law or in equity, to which Plaintiff may be justly entitled.

Dated: September 18, 2009
Houston, Texas

Respectfully,

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By: 
David S. Toy (DT 6397)

Attorneys for Plaintiff
COMMERCIAL METALS COMPANY